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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,088	08/01/2003	Javier Garza Laguera Garza	35165552.13UTIL	3204

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BAKER & MCKENZIE
PATENT DEPARTMENT
2001 ROSS AVENUE
SUITE 2300
DALLAS, TX 75201

EXAMINER

HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,088

Applicant(s)

LAGUERA GARZA ET AL.

Examiner

Khoa D. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-16 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-16 and 18-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/25/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the interior portion of the base portion further comprises a reinforced portion as recited in the amended claims 1 and 16, and the vertically extending rigid members are integrally formed in the seat as recited in the amended claims 10 and 16.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Both claims 10 and 16 call for “the vertically extending rigid members are integrally formed in the seat”. Such claim subject matter, however, was not described in the original specification to reasonably convey to one skilled person that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant, in the instant disclosure, described two vertically extending rigid members (elements 515 in Fig. 5; elements 615 in Fig. 6; elements 715

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in Fig. 7; elements 815 in Fig. 8) "located on the left and right sides of the toilet seat".

Applicant, however, did not describe that the vertically extending rigid members are integrally formed in the seat. Even the drawings (Figs. 5-8) did not clearly show that the vertically extending rigid members are integrally formed in the seat as claimed. One skilled person could speculate that the vertically extending rigid members attached to the seat by adhesive, dowels or hidden screws or nails. Since the recitation "the vertically extending rigid members are integrally formed in the seat", as presented in claims 10 and 16, is not supported by the written description, such recitation constitutes new matter.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 10, as presently understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Caldwell (5212840).

Regarding claim 10, the Caldwell reference discloses a toilet seat (Fig. 1).

The toilet seat has an inner rim, an outer rim and two vertically extending rigid members (Fig. 1c) located between the inner and outer rims of the left side and the right side of the toilet seat. The two vertically extending rigid members are positioned for alignment with the interior edge of the toilet bowl (col. 2, lines 10-

15) to prevent lateral displacement of the seat. The vertically extending rigid members are integrally formed in the seat (col. 2, lines 36-38).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10 and 15, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (2228927) in view of Caldwell (5212840).

Regarding claim 10, the Moore reference discloses a toilet seat (Fig. 1).

The toilet seat has an inner rim and an outer rim.

The Moore reference DIFFERS in that it does not specifically include two vertically extending rigid members as claimed. Attention, however, is directed to the Caldwell reference which discloses a toilet seat (Fig. 1). The toilet seat has an inner rim, an outer rim and two vertically extending rigid members (Fig. 1c) located between the inner and outer rims of the left side and the right side of the toilet seat. The two vertically extending rigid members are positioned for alignment with the interior edge of the toilet bowl (col. 2, lines 10-15) to prevent lateral displacement of the seat. The vertically extending rigid members are integrally formed in the seat (col. 2, lines 36-38) (22). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Moore reference by employing two integrally formed

vertically extending rigid member in the seat, in view of the teaching of Caldwell, in order to stabilize the seat by preventing lateral movement of the seat when in the lowered position.

Regarding claim 15, the seat further includes a plurality of radially disposed support members (about 16 or 7) on the bottom surface of the toilet seat.

8. Claims 1 and 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kayahara (6292956).

Regarding claim 1, the Kayahara reference discloses a toilet apparatus. The toilet apparatus includes a base portion (the floor contacting portion of element 7) and a bowl portion (about 3). The Kayahara reference DIFFERS in that it does not specifically include the dimensions of the base portion and the bowl portion as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ any of one such width and length for the base portion and the bowl portion since discovering optimum values for such width and length of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Regarding the amended limitation, if Figure 1 is cross-sectioned and looking in from the front end (similar to applicant cross-sectioned as shown in Figure 2), then the base portion also includes a reinforced portion having a plurality of walls (at 7) vertically extending from the base portion to the bowl portion.

Regarding claims 3-5, the reinforced portion (at 7) is aligned and corresponding with an anchorage point (about 9). Specifically, the anchorage point comprises two anchorage points (about 9a) corresponding to the two reinforcing portions (at 7) are located on opposite sides of the base portion.

Regarding claims 6, the modified Kayahara reference DIFFERS in that it does not specifically disclose that the anchorage points located about 8.95 inches as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to mount the anchorage points about 8.95 inches since discovering an optimum value for such mounting locations involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 7, the modified Kayahara also reference DIFFERS in that it does not specifically include the width and the length of the reinforced portion as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such width and length for the base portion since discovering an optimum value for width and length of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 8, the modified Kayahara also reference DIFFERS in that it does not specifically disclose the thickness of the wall of the base portion at least about .39 inches as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such

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thickness of the wall of the base portion since discovering an optimum value for such thickness involves only routine experiment or trial and error for one of skill in the art.

Regarding claims 9, the modified Kayahara also reference DIFFERS in that it does not specifically disclose the height of the toile apparatus is greater than about 17 inches as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such height for the toilet apparatus since discovering an optimum value for such height involves only routine experiment or trial and error for one of skill in the art.

9. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Caldwell (as discussed in paragraph 5).

Regarding claim 11, the Caldwell reference DIFFERS in that it does not specifically include the width and length of the toilet seat as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ any of one such width and length for the toilet seat since discovering optimum values for such width and length involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 12, the Caldwell reference also DIFFERS in that it does not specifically disclose that the width of the aperture formed by the inner rim is less than about half the width of the toilet seat as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such width of the aperture formed by the inner rim for the toilet

seat since discovering optimum value for such width involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 13, the Caldwell reference also DIFFERS in that it does not specifically disclose that the length of the aperture formed by the inner rim is greater than about 2/3 the length of the toilet seat as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such length of the aperture formed by the inner rim for the toilet seat since discovering optimum value for such length of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 14, the Caldwell reference also DIFFERS in that it does not specifically disclose that the width of the aperture formed by the inner rim about 8.2 inches and the length of the aperture formed by the inner rim about 16.7 inches as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such width and length of the aperture formed by the inner rim for the toilet seat since discovering optimum value for such width and length involves only routine experiment or trial and error for one of skill in the art.

10. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Moore (as discussed in paragraph 7).

Regarding claim 11, the modified Moore reference DIFFERS in that it does not specifically include the width and length of the toilet seat as claimed. It,

however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ any of one such width and length for the toilet seat since discovering optimum values for such width and length involves only routine experiment or trial and error for one of skill in the art, especially since the modified Moore toilet seat is adjustable to various width to accommodate users of different sizes.

Regarding claim 12, the modified Moore reference also DIFFERS in that it does not specifically disclose that the width of the aperture formed by the inner rim is less than about half the width of the toilet seat as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such width of the aperture formed by the inner rim for the toilet seat since discovering optimum value for such width involves only routine experiment or trial and error for one of skill in the art, especially since the modified Moore toilet seat is adjustable to various width to accommodate users of different sizes (Fig. 1).

Regarding claim 13, the modified Moore reference also DIFFERS in that it does not specifically disclose that the length of the aperture formed by the inner rim is greater than about $\frac{2}{3}$ the length of the toilet seat as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such length of the aperture formed by the inner rim for the toilet seat since discovering optimum value for such length of a result

effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 14, the modified Moore reference also DIFFERS in that it does not specifically disclose that the width of the aperture formed by the inner rim about 8.2 inches and the length of the aperture formed by the inner rim about 16.7 inches as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such width and length of the aperture formed by the inner rim for the toilet seat since discovering optimum value for such width and length involves only routine experiment or trial and error for one of skill in the art.

11. Claims 16 and 18-29, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Moore (as discussed in paragraph 7) in view of Kayahara (as discussed in paragraph 8).

Regarding claim 16, the modified Moore reference discloses a toilet seat having claimed features as discussed above. The modified Moore reference does not specifically disclose a toilet base portion and a toilet bowl portion as claimed. Attention, however, is directed to the Kayahara reference which discloses a toilet having a base portion and a bowl portion (as discussed in paragraph 8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Moore reference by employing a toilet having a base portion and a bowl portion in view of the teaching of Kayahara. Such modification would be considered a mere

substitution of one functionally equivalent toilet with a base portion and a bowl portion for another within the toilet apparatus art that would work equally well on the modified Moore device. Furthermore, claim 16 only recites the elements individually (i.e. a base portion, a bowl portion and a toilet seat) and fails to provide structural connections between the elements. Thus, the combination of the modified Moore and Kayahara does teach applicant's invention as claimed.

Claims 18-29 are similar to claims 3-9 and 11-14 and rejected as discussed above.

12. Claims 16 and 18-29, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kayahara (as discussed in paragraph 8) in view of Caldwell (as discussed in paragraph 5).

Regarding claim 16, the Kayahara reference which discloses a toilet having a base portion and a bowl portion as discussed in paragraph 8. Even though the Kayahara reference does not specifically include a toilet seat, it is understood that the Kayahara reference would inherently include a toilet seat to accommodate a user who wants to sit down and use the toilet. The Caldwell reference discloses a toilet seat having claimed features as discussed in paragraph 5. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Kayahara reference by employing two integrally formed vertically extending rigid member in the seat, in view of the teaching of Caldwell, in order to stabilize the seat by preventing lateral movement of the seat when in the lowered position. Furthermore, claim

16 only recites the elements individually (i.e. a base portion, a bowl portion and a toilet seat) and fails to provide structural connections between the elements.

Thus, the combination of the Kayahara and Caldwell does teach applicant's invention as claimed.

Claims 18-29 are similar to claims 3-9 and 11-14 and rejected as discussed above.

Response to Amendment

13. Applicant's amendment, filed on 07/25/2005, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

Response to Arguments

14. Applicant's arguments filed on 11/05/2004 with respect to the pending claims have been fully considered. However, such arguments are deemed not persuasive.

Applicant asserts that Moore does not teach the amended limitation that is "the vertically extending rigid members are integrally formed in the seat". See Remarks section, pages 7-9. Nevertheless, such arguments are moot in view of the new grounds of rejection under 35 U.S.C. 103(a) as being unpatentable over Moore (2228927) in view of Caldwell (5212840).

Applicant also asserts that Kayahara does not teach the amended limitation that is "the interior of the base portion further comprise a reinforced portion". See Remarks section, pages 10-11. The Examiner is respectfully traversed. As discussed supra, if Figure 1 is cross-sectioned and looking in from the front end (similar to applicant cross-

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sectioned as shown in Figure 2), then the base portion does include a reinforced portion having a plurality of walls (**at 7**) vertically extending from the base portion to the bowl portion and capable of providing support to the bowl portion. Thus, the Kayahara reference does teach the amended limitation. Furthermore, it is puzzled as to why applicant, in the arguments, keeps referring to *the fold back portion (at 8)* while the last Office Action, dated 01/25/05, did not address the fold back portion (at 8).

Applicant also asserts that it is not obvious to combine references to arrive at applicant's invention as claimed. See the Remarks section, pages 11-12. The examiner recognizes that references cannot be arbitrarily combined and that there must be some reasons why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

In this case, the modified Moore reference discloses a toilet seat having claimed features as discussed supra, except a toilet base portion and a toilet bowl portion as claimed. Kayahara, however, is relied upon for the teaching of a toilet having a base portion and a bowl portion (as discussed supra). Such modification would be considered a mere substitution of one functionally equivalent toilet with a base portion

and a bowl portion for another within the toilet apparatus art that would work equally well on the Moore device. Furthermore, claim 16 only recites the elements individually (i.e. a base portion/a bowl portion and a toilet seat) and fails to provide structural connections between the elements. Thus, the combination of the Moore and Kayahara does arrive to the applicant's invention as claimed.

Also, applicant's arguments with respect to claims 1, 3-16 and 18-29 have been considered but are moot in view of the new grounds of rejections as discussed supra.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hunt was cited to show a toilet seat having two vertically extending members integrally formed with the seat. Armano, Sr. and Adams were cited to show a toilet seat having two vertically extending members attached to the left side and the right side of the seat to prevent lateral movement of the seat. Signori et al., Molloy and Miwa et al. were cited to show a toilet having a base portion and a bowl portion, wherein the base portion also includes a reinforced portion having a plurality of walls vertically extending from the base portion to the bowl portion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a horizontal line underneath.

Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
10/14/2005